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# REPORT

1936-37 VIII

FROM THE

(54)

## SELECT COMMITTEE ON MEDICINE STAMP DUTIES

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*Ordered by The House of Commons to be Printed*  
*18th February 1937*

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LONDON

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ORDER OF REFERENCE.

Wednesday, 11th November, 1936.

*Ordered*, That a Select Committee be appointed to consider the duties of excise chargeable under the Medicines Stamp Act, 1802, the Stamp Act, 1804, and the Medicines Stamp Act, 1812, and any enactment amending those Acts, and to report thereon and make such recommendations for the alteration of those duties or otherwise as they think fit with a view to reforming the law relating thereto.

Committee *nominated* of,—Mr. Acland, Mr. Baxter, Admiral Beamish, Mr. Benson, Sir Reginald Blair, Mr. Cary, Sir John Ganzoni, Mr. George Hall, Mr. Hardie, Mr. Haslam, Mr. Lewis Jones, Mr. Keeling, Mr. Lathan, Captain Ramsay, and Sir Arnold Wilson.

*Ordered*, That the Committee have power to send for persons, papers, and records.

*Ordered*, That Five be the quorum.—(*Sir George Penny.*)

Monday, 16th November, 1936.

*Ordered*, That Mr. Haslam be discharged from the Committee on Medicine Stamp Duties and that Sir John Haslam be added to the Committee.—(*Sir George Penny.*)

Friday, 27th November, 1936.

*Ordered*, That Admiral Beamish be discharged from the Select Committee on Medicine Stamp Duties and Mr. Bossom be added to the Committee.—(*Sir George Penny.*)

Thursday, 4th February, 1937.

*Ordered*, That the Report of the Select Committee on Patent Medicines in Session 1914 be referred to the Select Committee on Medicine Stamp Duties.—(*Sir John Ganzoni.*)

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## REPORT

The Select Committee appointed to consider the duties of excise chargeable under the Medicines Stamp Act, 1802, the Stamp Act, 1804, and the Medicines Stamp Act, 1812, and any enactment amending those Acts, and to report thereon and make such recommendations for the alteration of those duties or otherwise as they think fit with a view to reforming the law relating thereto: Have agreed to the following Report :—

### EVIDENCE.

1. Your Committee have heard evidence from all sources which they considered could yield useful information or opinions regarding the subject of their enquiry. They have endeavoured to give an opportunity to appear before them, to all persons or bodies who so wished. In certain cases, where this has not been possible, a written statement has been submitted. In addition, several documents and memoranda were submitted by certain firms and other interested parties, and, at the request of the Committee, by the Customs and Excise.

### STAMP DUTY LAW.

2. Duties in respect of medicines were first imposed in 1783 as part of the Budget of that year, it being considered at that time that “ quack medicines were very proper objects of taxation ”. The tax was twofold as it is to-day. It was imposed on “ all persons who sold medicines and who were not regularly bred to the profession of doctors, apothecaries, etc.,” and secondly a duty was “ laid on the medicines ” themselves when sold by such persons. This is worthy of note as showing that the original aim of the legislature in touching the “ patent ” medicine trade was, primarily, not to control it but to obtain revenue from it.

A further Act altering the tax followed in 1785, but this was in its turn repealed in 1802, in which year the first of the Acts in force to-day was passed. The principle of two duties (a licence duty and a medicine duty) was maintained, the intention being still to tax “ quack ” medicines and the persons who made and sold them, and a Schedule containing the names of a large number of dutiable medicines was attached to the Act. This schedule with certain alterations was revised in 1803 and re-enacted in the Act of 1804 (which was a general Stamp Act dealing with various kinds of duty), and a general provision imposing a charge on all articles not specifically named, together with a schedule of exemptions, was added. The Medicines Stamp Act of 1812, on which



the present practice is based, repealed the former schedule and substituted another (which still remains in force), containing the names of 550 preparations which were specifically made liable to duty, including "all artificial Mineral Waters and all Waters impregnated with . . . Carbonic Acid Gas . . . etc." The general charge on all articles not specifically named was continued, together with the schedule of exemptions.

The general provision and list of exemptions are given hereunder:—

"And also all other Pills, Powders, Lozenges, Tinctures, Potions, Cordials, Electuaries, Plaisters, Unguents, Salves, Ointments, Drops, Lotions, Oils, Spirits, Medicated Herbs and Waters, Chemical and Officinal Preparations whatsoever, to be used or applied externally or internally as Medicines or Medicaments, for the Prevention, Cure, or Relief of any Disorder or Complaint incident to or in anywise affecting the Human Body, made, prepared, uttered, vended, or exposed to sale, by any Person or Persons whatsoever;

Wherein the person making, preparing, uttering, vending, or exposing to sale the same, hath or claims to have any occult Secret or Art for making or preparing the same;

Or hath or claims to have any exclusive Right or Title to the making or preparing the same;

Or which have at any time heretofore been, now are, or shall hereafter be prepared, uttered, vended, or exposed to sale under the Authority of any Letters Patent under the Great Seal;

Or which have at any time heretofore been, now are, or shall hereafter be, by any public Notice or Advertisement or by any written or printed Papers or Handbills, or by any Label or words written or printed, affixed to or delivered with any Packet, Box, Bottle, Phial, or other Inclosure containing the same, held out or recommended to the Public by the Makers, Vendors, or Proprietors thereof as Nostrums, or Proprietary Medicines, or as Specifics, or as beneficial to the Prevention, Cure or Relief of any Distemper, Malady, Ailment, Disorder, or Complaint, incident to or in anywise affecting the Human Body."

The schedule contains three exemptions from the duties. The exemptions may be summarised as follows:—

(1) Drugs referred to by the provisions of the Act of Tonnage and Poundage made in the Twelfth Year of the Reign of King Charles the Second, and also by an Act made in the Eleventh Year of the Reign of King George the First.

(This exemption is now obsolete.)



(2) Drugs vended without the addition of any other Drug or Ingredient, by a duly qualified chemist, etc.

(3) Known, admitted and approved remedies.

This substituted schedule remains in force to-day except that the charge on artificial waters was repealed in 1833, and a statutory exemption of ginger and peppermint lozenges and other articles of confectionery, unless sold or recommended as medicines, was contained in the Stamp Act of 1815.

Certain minor provisions relating to medicine stamp duties were passed in 1803, 1864 (when the excise licence was made a duty of Excise), 1875 and 1891, and in the year 1908 the duties on medicines were made for all purposes duties of excise.

### SCALE OF DUTIES.

3. The original scale of duties contained in the Act of 1802 was maintained until 1915 when by the Finance (No. 2) Act of that year the duties were doubled. This provision was repeated every year in the Finance Act until 1927, when, by the Finance Act of that year, the duties were made permanent. The scale of duties is now as follows:—

#### *Present Rate of Duty (Finance (No. 2) Act 1915).*

			£	s.	d.
Not exceeding the value of One Shilling	...	...	0	0	3
Exceeding 1s. and not exceeding 2s. 6d.	...	...	0	0	6
Exceeding 2s. 6d. and not exceeding 4s.	...	...	0	1	0
Exceeding 4s. and not exceeding 10s.	...	...	0	2	0
Exceeding 10s. and not exceeding 20s.	...	...	0	4	0
Exceeding 20s. and not exceeding 30s.	...	...	0	6	0
Exceeding 30s. and not exceeding 50s.	...	...	1	0	0
Exceeding 50s.	...	...	2	0	0

Your Committee are of opinion that the graduation of the duty is too steep. Their principal objection is that the cheaper the article the higher is the rate of duty, so that (unless bulk is broken, see para. 14) it is impossible to sell dutiable articles at prices which all sections of the public can easily afford. An article, for example, made to sell at 2d attracts a duty of 3d. (150 per cent.) and at 1s. 1d. a duty of 6d. (about 50 per cent.). This scale appears to Your Committee to be inequitable, and the percentage rates to be somewhat burdensome.

Your Committee have given careful consideration to the relative suitability, from various aspects, of a strict ad valorem duty on the one hand, and a stepped duty (similar to that now in force, but more evenly graduated) on the other. For the reasons given later (in para. 18) they consider a stepped duty to be preferable.

In view of Your Committee's recommendation on this matter, they here point out that the inequalities inseparable from such a duty are more apparent than real. While the percentage figure



may appear considerable, the actual amount of the duty, particularly on very low-priced articles, would be small and would compare very favourably with that at present levied on similar articles.

### CRITICISMS OF EXISTING LAW.

4. The provisions of the Stamp Duty Acts of which a short survey has been here made have been further obscured and complicated as the result of a number of judicial decisions during the past 60 years, and were described by the High Court in 1931 as "a mass of confused obsolete verbiage." The result of all this has been to create numerous anomalies and to make legally possible avoidances of the duty not originally contemplated. Sir Nathaniel Highmore, formerly Solicitor to the Customs and Excise, informed the Select Committee on Patent Medicines which reported in 1914 that it had been felt for a long time that the Stamp Duty law was "very much out of date".

This Committee also criticised the Stamp Acts and recommended their amendment "to remove the numerous existing anomalies".

### LIABILITY TO DUTY.

5. The present position regarding liability to duty, based on the Act of 1812, may be summarised for all practical purposes thus:—

All preparations (as defined in the Schedule quoted above in para. 2) to be used as medicines or medicaments which are:—

- (a) secret, or claimed to be such; or
- (b) proprietary or claimed to be such; or
- (c) held out or recommended as beneficial for the prevention, cure or relief of any human ailment

are liable to duty. These criteria of liability frequently overlap.

### VARIOUS ANOMALIES.

6. Only those preparations which were to be used "as medicines or medicaments" were included in the list and it is seen at once that many articles which may be recommended by every art of advertisement to relieve, cure or prevent one or more human ailments, defects or bodily conditions are not liable to duty. There are at the present time a large number of such products which, though not strictly medicines, are widely advertised, in effect, for the relief, cure or prevention of some human ailment. Numerous examples can be found in the popular Press and in other publications of tonic foods, beverages (alcoholic and otherwise) appliances (such as deaf aids and trusses), meat extracts, cereals, bread and even mustard which are so recommended. Your Committee make, elsewhere, proposals regarding such products.

A further anomaly which Your Committee urge should be abolished is that whereby a preparation which is liable to duty where it is recommended by the use of an ailment name, is free



from liability where reference is made only to an organ or part of the body (e.g., Backache and Kidney Pills are liable; Back and Kidney Pills are not).

Your Committee are of opinion that the law should be brought up to date in this respect by being made more comprehensive, and that a claim, even if incidental, to relieve, cure or prevent any human ailment or bodily condition should be the criterion of liability to duty.

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7. The Act of 1812 (see para. 2) allowed special exemptions to three classes of preparations of which one is now obsolete. The other two are "single drugs" (drugs sold without the admixture of any other ingredient) and what are called "known, admitted and approved remedies". It may fairly be said that successful claims to these two exemptions, especially the latter, have been the cause of a large loss to the revenue.

8. Numerous "single drugs" sold under fancy names and with a full recommendation for the relief of ailments have successfully claimed exemption. The "known, admitted and approved remedy" exemption is obscure and entirely out of date. It was not claimed for nearly 100 years until in 1903 a judgment was given in the Courts. By this judgment it was held "that if a retail chemist purchased from the manufacturer or other person, a preparation of medicinal drugs which at the time of his purchase was exempt from duty by reference to the exemption in the Schedule to the Act 52 Geo. 3, c. 150 (Medicines Stamp Act, 1812), the fact that he applied to it a label recommending it as a remedy for specific ailments would not deprive the preparation of the exemption". The broad effect of this was the sale by qualified chemists "of the bulk of their ready-made preparations duty free whilst precisely the same preparations sold by unqualified vendors (e.g., a grocer) pay duty".

As a result of this it was decided not to question any recommendation for the future, but to allow qualified chemists to sell unstamped all remedies recognised as "known, admitted and approved" which were not secret or proprietary. Following a further judicial decision (*Attorney-General v. Lewis and Burrows, Ltd.*, 1932, 1 K.B. 538) the present position is that this exemption may be successfully claimed where a formula in accordance with a standard book of reference is printed on the label and proprietary rights are disclaimed.

where  
9. By the Act of 1812 "all artificial Mineral Waters and all waters impregnated with . . . carbonic acid gas . . . and all compositions . . . for making . . . the said waters" were specifically laid under duty. At a later stage (1833) this item was repealed but medicinal waters or compositions for making them, recommended for human ailments, continued to pay duty until 1878 when by a judicial decision it was held that the earlier repeal operated as an exemption from duty for all such waters or compositions for



making them. Since then all salines have escaped duty even though held out to the public as medicines. In spite of some evidence tending to show that such preparations are not truly, or not wholly, medicinal, Your Committee are of opinion that no case was made out for their exemption from duty. Many natural Waters similarly claim to be remedial and Your Committee are of opinion that such a claim should involve liability. They will make elsewhere a recommendation regarding a certain user of British Spa Waters.

Another class of preparation which Your Committee are of opinion should be made liable to duty consists of medicines which are usually labelled with prescription numbers and are advertised "to compete with" or to be "equivalent to" well-known proprietary remedies. Such preparations are sold at a lower price and, while not making any direct remedial claims, rely on the name and reputation, generally built up by expensive advertising, of the original article.

Evidence was heard on behalf of medical herbalists and of makers of veterinary medicines. Your Committee are of opinion that herbal remedies should conform to the law relating to medicines generally, but that animal medicines, at any rate for the present, should continue to be exempt from liability to duty, except when advertised for the relief of human ailments, or bodily conditions, etc. Your Committee are of opinion, however, that the suitability for taxation of advertised veterinary remedies might well be considered, whilst preserving the freedom from liability of all remedies dispensed by Veterinary surgeons.

#### POSITION OF REGISTERED PHARMACIST.

10. While the original intention of the Act of 1783 was to tax the "quack" and to exempt from taxation those "bred to the profession of physician or apothecary", Your Committee are unable to agree that this original exemption is good ground to-day for giving the modern chemist or registered pharmacist a very valuable preference in the sale of preparations which claim the "known, admitted and approved remedy" exemption, referred to in paragraph 8. Under the present practice all such remedies can be legally sold unstamped by the chemist but must be stamped if sold by another kind of trader, though the latter equally holds an excise licence. Your Committee recognise that the registered chemist already has certain advantages, e.g., under the Dangerous Drugs Act, the Pharmacy and Poisons Acts and the Health Insurance Acts, and they feel that the present system of "de-stamping" should not be continued, and that all dutiable remedies should be sold on equal terms by chemists and non-chemists.

There was considerable divergence of evidence regarding the additional safeguard to the public which is provided by the presence of a registered pharmacist on premises where there are large sales



of ready-packed medicines. Your Committee, however, take the view that this protection is in many cases illusory, and they are, therefore, not prepared to put the value of such a safeguard very high.

### YIELD OF DUTIES.

11. The yield of the medicine stamp duty has fallen during the past ten financial years from £1,295,139 to £747,930 (1935-36). From the peak year (1928-9) during that period, when the figure rose to almost £1 $\frac{1}{3}$  million, there has been a decrease of no less than 44 per cent. in the yield. This decrease was attributed very largely to the knowledge acquired by manufacturers and chemists of legal methods in securing exemption.

### MACHINERY OF COLLECTION.

12. An adhesive stamped label bearing the appropriate amount of the duty with the words "No Government Guarantee" is affixed to every "packet, box, bottle, pot, etc." containing any dutiable preparation, in such a way that the package cannot be opened without tearing the stamp (see also below, para. 14). The duty must be paid by the proprietor, compounder, or first vendor before the preparation is sold either wholesale or retail.

Usually the labels are affixed by the manufacturers and the preparations are sent out to the retailer ready stamped. The retailer is required by law to report any cases in which dutiable medicines are supplied unstamped. The penalty for selling a dutiable article unstamped (or not properly stamped) is £10, and for removing a stamp from a sold packet or wrongfully affixing a stamp to another packet the penalty is £20.

### EXCISE LICENCE.

13. The excise licence to which all persons who either manufacture or sell dutiable preparations are liable is 5s. a year. A separate licence must be taken out for each set of premises.

It is notable that during the nine years 1927-1936 the number of excise licences has more than doubled. Such a large increase tends to suggest that the trade in dutiable preparations is a valuable one, and there was some evidence of wholesale houses paying the licence duty for retailers other than chemists as an inducement to stock and sell their products.

### "BROKEN BULK."

14. It is permissible for any retailer who holds an excise licence to open a package upon which the manufacturer has paid duty, and to which an appropriate stamp has been affixed, and to sell the contents separately, provided that they are not enclosed in a dutiable enclosure. This is generally referred to as "broken bulk,"



and is very largely resorted to by retailers, especially in the poorer districts. Your Committee are very strongly of opinion that great hardship would be caused if any obstacle were to be placed in the way of persons who wish to buy medicines in small quantities. If, however, the recommendation which Your Committee will submit later is approved, "broken bulk" should become far less necessary and the possibility of making the practice illegal might well be considered.

### YIELD OF PROPOSED DUTY.

15. Interesting figures were given to Your Committee regarding the turnover of the proprietary medicine trade. The retail turnover of the members of a large association of important manufacturers was stated to be £13½ million. It was further suggested that proprietary medicines manufactured apart from these would bring the total turnover of the trade to at least £28 million. This figure includes the sales of many preparations at present subject to exemption.

If a somewhat more conservative estimate of the unknown element is accepted, it would appear that the annual turnover might reach the figure of £20 million, in which case a duty of 16⅔ per cent. would yield approximately £3,300,000, in the event of the abolition of many existing exemptions.

These figures, though necessarily based upon estimates, will give some indication, at least, of the revenue that might be expected from such a duty. The addition, as proposed in paragraph 18, of articles other than proprietary medicines would, of course, add to the yield.

### CONTROL.

16. Your Committee have endeavoured to limit their enquiry as far as possible to their terms of reference, which they have interpreted as precluding them from making any departure from the fiscal aspect of the question. Strong opinions were, however, expressed by certain witnesses in the course of the enquiry that some form of control of the medicine trade was desirable, to safeguard the public from fraudulent exploitation. Authoritative statements were made to the effect that people (largely the poorer and less well-educated) spend more money than they can afford on remedies of little or no efficacy, with an accompanying indirect danger to health as a result of their not seeking medical or surgical treatment in time. Though Your Committee have reason to believe that matters are not as bad as they were, they are strongly of opinion that the appeal to fear which is the underlying motive of large numbers of advertisements, not only of medicines in the strict sense but of such articles as those referred to at the beginning of paragraph 6, is psychologically harmful.



## CONCLUSIONS.

17. Your Committee reached the following conclusions :—

(1) That the existing Stamp Acts, passed over 100 years ago, are out of date, largely obsolete and quite inappropriate to modern requirements.

(2) That owing to out of date exemptions and to a number of judgments in the courts, wholesale avoidance of duty has been practised which has led, during the last nine years, to a remarkable decrease in the yield of the duty (nearly 50 per cent.).

(3) That the law should be simplified, thus removing those obscurities which at present give rise to numerous anomalies and add greatly to the difficulties of administration.

(4) That, in spite of some evidence to the contrary, the trade in medicinal articles is, in their opinion, one which is suitable for taxation.

(5) That the rate of duty should be lowered, particularly in the lower ranges, and more evenly graduated.

(6) That it is undesirable that the same product should be sold by different vendors stamped and unstamped.

(7) That a far larger range of preparations should be made liable to duty.

## RECOMMENDATIONS.

18. Your Committee therefore make the following recommendations :—

*Repeal.*

(1) That the Acts of 1802, 1804, 1812, Section 2 of the Finance Act, 1927, and all other existing legislation on the subject of Medicine Stamp Duties be repealed.

*Dutiable Articles.*

(2) That, subject to the exemptions mentioned in (5) below :—

Preparations or substances of any sort, including medicines, medicaments, medicated articles, drugs, herbs, fumigants, inhalants, disinfectants, antiseptics, soaps, tooth pastes, tooth powders, mouth washes, medicated wines, natural or artificial mineral waters or compositions for making such waters, confectionery, toilet preparations and cosmetics to be used or applied externally, internally or otherwise, as medicines or medicaments, which are recommended, held out, or advertised in any way whatsoever either directly or indirectly (whether by public display, wireless telephony or other mechanical reproduction of the human voice or by label, notice, circular or other written recommendation or otherwise) for the prevention, cure or relief of any human ailment, defect, disorder,



condition or habit or for the treatment of any part of the human body or for the protection or maintenance of bodily health should be liable to a duty based on the retail selling price.

### *Duty Scale.*

(3) That the present scale of duties should be revised as follows:—

<i>Retail price excluding duty.</i>		<i>Rate of duty.</i>	
Exceeding	Not exceeding		
—	$\frac{7}{8}$ d.	...	$\frac{1}{8}$ d.
$\frac{7}{8}$ d.	$1\frac{3}{4}$ d.	...	$\frac{1}{4}$ d.
$1\frac{3}{4}$ d.	3d.	...	$\frac{1}{2}$ d.
3d.	6d.	...	1d.
6d.			1d. for the first 6d. and 1d. for every 6d. or part of 6d. over 6d.

*Note.*—Your Committee were much inclined to recommend a direct ad valorem sales tax of a fixed percentage, but in view of some of the evidence, and especially that of the Customs and Excise, they were persuaded that this would be more difficult to administer and would cause more disturbance to existing prices and other arrangements of manufacturers. If, however, it were decided to adopt an ad valorem percentage duty Your Committee would recommend a rate of  $16\frac{2}{3}$  per cent., i.e., 2d. in the 1s.

### *Excise Licence.*

(4) That the Excise Licence of 5s. per annum be continued as heretofore.

### *Exemptions.*

(5) That exemption be granted to

(a) all medicines, etc. (as set out in paragraph 2 above) recommended and sold solely and exclusively to registered members of the medical or dental professions;

(b) all preparations, etc., supplied to registered medical or dental practitioners for use in the discharge of their professional duties, also all preparations, etc., supplied to registered pharmacists or registered medical or dental practitioners for use in dispensing as a component part of medicines prescribed by such practitioners;

(c) all medicines, etc., exported for use or consumption abroad; and

(d) all British spa waters consumed only at the place of origin.



Your Committee would urge consideration of the propriety of taxing foods and certain appliances (such as deaf aids), beverages (alcoholic and otherwise) and other preparations widely advertised as possessing properties beneficial for health. They further put forward the view that, if it is found difficult to distinguish between cosmetics which claim to be remedial and those which do not, the taxation of all cosmetics might receive consideration.

Should control of the trade in medicines and appliances be deemed desirable, for the protection of the public, Your Committee believe that the best method of achieving this would be a system of examination and registration of all advertised medicines and appliances.













